

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Regulation of Health and Adult Social Care Services**

##### *Chapter 4 – Pricing*

##### *Schedule 12 - Procedure on references under section 120*

889. This Schedule provides that, in making a reference to the Competition Commission, Monitor must outline its reasons for the proposed pricing methodology. Monitor also has to include the reasons for considering that there are no grounds for the Commission to determine that the proposed methodology is inappropriate. The grounds on which the Commission could make such a determination are set out in section 121(4). Monitor must send a copy of any reference to the NHS Commissioning Board and to those persons (i.e. relevant providers or CCGs) who had objected to the proposed methodology (paragraph 1(2)). Those persons can make representations to the Competition Commission about Monitor's reference, within 10 days of receiving the copy of the reference. A person who makes a representation must provide Monitor with a copy. Monitor may reply to the representations, within 10 days of receiving its copy; and, if it chooses to do so, must send the person a copy of that reply (paragraph 2).
890. On receipt of a reference, the Chairman of the Commission is required to select a group to consider the reference, make a determination and give any directions to Monitor to give effect to the determination (sub-paragraph (1) of paragraph 3). Sub-paragraphs (2) to (6) of paragraph 3 make provision about the constitution of the group, including that it must comprise three members of the Commission. Sub-paragraph (7) provides that a decision of the group will only be effective if all members are present when the decision is made and two of the three members are in favour of the decision.
891. The Competition Commission may make rules on the procedure to be followed in making determinations on references (paragraph 11). In particular, this could include time limits for oral evidence. Any rules must be published.
892. [Paragraph 4](#) makes provision about the timetable for references. The group must make a determination within 30 working days of the last date on which Monitor is entitled to respond to the objectors.
893. The group may extend the deadline by not more than 20 working days and not more than once. The Competition Commission would have to notify the extension to Monitor, the NHS Commissioning Board and those persons who had objected.
894. [Paragraph 5](#) provides that the group may disregard:
- any representations from a person not raised by that person in the original consultation; and/or

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

- any matter Monitor raises in a reply to a representation from a person that is not included in the original reference, if it considered this necessary to secure a determination within the permitted timescales.
895. Paragraphs 6 to 8 make provision to enable the Commission to require information in order to help it make its determination. The information could take the form of documents, evidence at oral hearings or written statements. Paragraphs 9 and 10 make provision relating to evidence, including provision about default. A failure to provide information or the provision of false information is to be regarded as a contempt of court. However, no person could be compelled to provide information that it could not be compelled to under civil proceedings in the High Court.
896. Under paragraph 12, the unsuccessful party must pay the costs the Competition Commission incurs in making a determination on a reference. If the Commission determines that the proposed pricing methodology should be changed, Monitor must pay the Commission's costs. If the Commission determines that the proposed methodology may be implemented without changes, those persons who had objected may be named as those required to pay the Commission's costs. This provision is intended to deter persons from objecting unless they have good reason to do so and to help ensure that Monitor makes sensible and appropriate proposals for pricing methodologies.